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September 13, 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

BY COURIER

William F. Caton
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

EX PARTE PRESENTATION

Re: **Implementation of the Pay Telephone Reclassification and
Compensation Provisions of the Telecommunications Act of
1996, CC Docket No. 96-128**

Dear Mr. Caton:

On behalf of the American Public Communications Council ("APCC") and the Georgia Public Communications Association ("GPCA"), this letter is submitted to supplement the record in this proceeding regarding the issue of nonstructural safeguards to prevent the Regional Bell Operating Companies ("RBOCs") and other local exchange carriers ("LECs")¹ from "prefer[ring] or discriminat[ing] in favor of [their] payphone service. 47 U.S.C. § 276 (a)(2), (b)(1)(C).

APCC contends that the plain meaning of Section 276(a)(2) prohibits all discrimination by the LEC between its own payphone services and independent payphone service providers ("PSPs"), and requires that all operating functions provided by LECs to their own payphone operations -- including coin line functions programmed with the PSP's coin rates, installation and maintenance services, and validation, billing and collection services -- be available to IPP providers on the same rates, terms and conditions. The RBOCs contend that nondiscrimination requirements should not be interpreted to apply to all the services described above, and should not even require LECs to provide coin line functions that can be programmed with the coin rates of PSPs other than the LEC.

¹ Although the cited statutory provisions refer to the RBOCs, APCC and GPCA have taken the position that the same safeguards should be applied to the larger independent LECs.

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In the First Report and Order in CC Docket No. 96-98, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, FCC 96-325, released August 8, 1996, which was issued after the comment period in this proceeding had closed, the Commission interpreted the non-discrimination provision of Section 251 of the Act, 47 U.S.C. § 251(c)(2)(D), the language of which is closely similar to the non-discrimination language of Section 276.² The Commission specifically compared the Section 251 language with the longstanding prohibition of Section 202 against "unjust or unreasonable discrimination," 47 U.S.C. § 202(a), and said:

The nondiscrimination requirement in section 251(c)(2) is not qualified by the "unjust or unreasonable" language of section 202(a). We therefore conclude that Congress did not intend that the term "nondiscriminatory" in the 1996 Act be synonymous with "unjust and unreasonable discrimination" used in the 1934 Act, but rather, intended a more stringent standard. . . . We believe that the term "nondiscriminatory," as used throughout section 251, applies to the terms and conditions an incumbent LEC imposes on third parties as well as on itself.

Local Interconnection Order, ¶¶ 218-19.

The Commission should apply this same interpretation to the closely similar language of Section 276(a)(2). The phrase "shall not discriminate" in Section 276 is also "not qualified by the 'unjust or unreasonable' language of Section 202(a)," and should be similarly interpreted to apply a "stringent standard" of equality on all the terms and conditions on which a LEC provides service to its own vs. independent payphone operations.

Thus, if a LEC provides coin control functions utilizing the coin rates applicable to its own payphones, it must make available the same functions utilizing the coin rates selected by other PSPs for their payphones. If a LEC provides equipment installation and

² Section 251(c)(2)(D) states that interconnection shall be on rates, terms, and conditions that are just, reasonable, and nondiscriminatory" Section 276(a)(2) states that a Bell Company "may not prefer or discriminate in favor of its payphone service"

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maintenance service to its own payphones on an allocated cost basis, it must offer the same service to other PSPs on an allocated cost basis. If a LEC provides validation or billing and collection services for its own payphone operations' operator-assisted calls, it must provide the same services on the same terms and conditions to other PSPs.

Sincerely,

A handwritten signature in cursive script, appearing to read "Albert H. Kramer".

Albert H. Kramer

RFA/nw